

1 Plaintiff submits this Case Management Statement. Plaintiffs are represented
 2 by Fair Housing Law Project of the Law Foundation of the Silicon Valley and Wilson
 3 Sonsini Goodrich & Rosati.

4

5 **DESCRIPTION OF THE CASE**

6 **1. Jurisdiction and Service:**

7 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
 8 because Plaintiff has alleged causes of action for violations of the Federal Truth in
 9 Lending Act, pursuant to 15 U.S.C. § 1601 *et seq.*

10 This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337 to hear
 11 and determine Plaintiff's state law claims because those claims are related to
 12 Plaintiff's federal claims, arise out of a common nucleus of operative facts and form
 13 part of the same case or controversy under Article III of the United States
 14 Constitution.

15 No issues exist regarding personal jurisdiction or venue. None of the parties
 16 have been served with this complaint as of the date of this statement.

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18 **2. A Brief Description of Events Underlying the Action:**

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20 ***Plaintiffs' Description of the Case:***

21 This is a predatory lending case in which plaintiff alleges that defendants acted
 22 in concert to defraud plaintiff Juan Cuevas, a fifty-nine year-old Spanish speaking
 23 man of Mexican heritage, of his home. Plaintiff met with Defendant Samantha
 24 Trevino, a loan officer and licensed salesperson with Atlas Realty/Financial Services
 25 Incorporated to refinance their home in May of 2006. Defendants, acting through
 26 Defendant Samantha Trevino, executed a classic "bait and switch" routine by
 27 promising one thing during their discussions, which occurred in Spanish, then taking
 28 advantage of Plaintiff's limited ability to read and write English and having him sign
 29

1 documents written in English that did not reflect the terms and conditions promised
 2 by Defendants.

3 Defendant Trevino never advised Mr. Cuevas of a number of salient facts
 4 regarding the true nature of the transaction, including the fact that the loan was a
 5 negatively amortizing loan, meaning that the payments had not been set sufficiently
 6 high to pay off the interest as it accrued on the loan, that the amount Mr. Cuevas
 7 needed to pay each month to prevent the principal from increasing was \$3,100 –
 8 nearly \$400 *more* than the \$2755 monthly payment he was originally seeking to
 9 reduce; that Mr. Cuevas' monthly payment could increase *every month* after the
 10 inception of the loan, not just once per year; and that the prepayment penalty on his
 11 existing loan was \$10,253, not \$7,000. Plaintiff, therefore, alleges that the true terms
 12 of this transaction were misrepresented to him at the closing.

13 Further, Mr. Cuevas alleges that he was not given accurate disclosures relating
 14 to the aforementioned transaction, in violation of state and federal law. After Plaintiff
 15 signed the closing documents of the aforementioned transaction, Defendants provided
 16 him with unsigned copies of the document notifying him of his right to rescind which
 17 contained contradictory and confusing information. Specifically, the transaction date
 18 and the expiration date were incorrectly entered creating the impression that Mr.
 19 Cuevas had more time in which to rescind. Defendants later made handwritten
 20 changes to these dates and then forged Mr. Cuevas' initials on the documents to make
 21 the record in the file appear as though Mr. Cuevas had received the proper statutory
 22 notice of his rescission rights. In fact, Mr. Cuevas never received a copy of the
 23 "corrected" notice of right to rescind nor was he ever notified of these changes.

24 Adding to the confusion, funds were disbursed to Mr. Cuevas prior to the
 25 expiration of the noticed rescission period. Mr. Cuevas is now forced to file the
 26 instant action to avoid losing his home and recover damages caused by the fraudulent
 27 conduct and statutory violations engaged in by Defendants.

28 ***Defendants Description of the Case:***

29 Not available at this time.

1 2. **Principle Factual Issues in Dispute:**

2 a. Whether Defendants acted in concert to defraud Plaintiff of his home;

3 b. Whether all communications between Plaintiff and Defendant Trevino

4 were exclusively in Spanish;

5 c. Whether Defendant Trevino told Plaintiff that payments on the new loan

6 would be \$1800 per month including taxes and insurance;

7 d. Whether Defendant Trevino told Plaintiff that the interest rate would

8 only go up once every year and that the payment would only go up by \$100-\$200 for

9 each of the first 5 years;

10 e. Whether Defendant Trevino assured Plaintiff that it was in Plaintiff's

11 best interest to refinance in May of 2006 rather than wait until after November

12 of 2006, when the prepayment penalty on his preexisting loan expired;

13 f. Whether Defendants steered Plaintiff into a loan that they knew Plaintiff

14 could not afford;

15 g. Whether Defendant Trevino knowingly falsified Plaintiff's income and

16 other information on the loan application;

17 h. Whether initials allegedly placed by Plaintiff on the signed Truth in

18 Lending disclosure by, dated June 2, 2006, were forged by Defendants.

20 3. **Principle Legal Issues In Dispute:**

21 a. Whether defendants violated the Truth in Lending Act, 15 U.S.C. §

22 1601 *et seq.*, and its implementing regulations, Federal Reserve Board Regulation Z,

23 12 C.F.R. § 226;

24 b. Whether defendants violated the California Civil Code § 1632;

25 c. Whether defendants Atlas, Trevino and Silbernagel fraudulently

26 induced plaintiff to enter into the May 31, 2006 mortgage transaction;

27 d. Whether defendants Atlas, Trevino and Silbernagel breached their

28 fiduciary duty to plaintiff.

29 e. Whether defendants violated California Business and Professions Code

1 § 17200 *et seq.*

2 f. Whether defendants intentionally inflicted emotional distress upon
3 plaintiff.

4 g. Whether defendants were negligent.

5 h. Whether defendants violated California Civil Code § 1750 *et seq.*

6 i. Whether defendants were unjustly enriched at the expense of plaintiff.

7 **4. Motions:**

8 There are no prior or pending motions at this time.

9 **5. Amendments of Pleadings:**

10 Plaintiff intends to amend his complaint on or before August 31, 2007.

11 **6. Evidence Preservation:**

12 Plaintiffs request that Defendants retain all currently existing documents and
13 computer files relating to the mortgage transaction in question.

14 **7. The Parties Certify that They Have Made the Following Disclosures:**

15 Pursuant to the Case Management Scheduling Order issued on May 30, 2007, the
16 Parties were asked to complete their FRCP Rule 26(a) initial disclosures by no later
17 than August 24, 2007.

18 Plaintiff did not complete initial disclosures by this date because the complaint has
19 not yet been served until August 24, 2007.

20 **8. Discovery:**

21 Plaintiffs and Defendants have not agreed to a Discovery plan as Defendants
22 have not been served yet.

23 **9. Class Actions:**

24 This case is not a class action.

10. Related Cases:

2 There are no related cases or proceedings pending before another judge of this
 3 court, or before another court or administrative body.

11. Relief:

5 Plaintiff Cuevas is seeking cancellation of the Deed of Trust and any and all
 6 mortgage documents dated May 31, 2006; rescission of the Deed of Trust and any and
 7 all mortgage documents dated May 31, 2006 and any and all agreements or contracts
 8 that made up the fraudulent transaction at issue; an accounting, restitution and/or
 9 disgorgement; compensatory and general damages; special damages; punitive and
 10 exemplary damages according to proof; statutory damages pursuant to the Truth In
 11 Lending Act; costs and reasonable attorneys' fees; prejudgment interest; injunctive
 12 relief; and such other and further relief as the Court deems proper.

**13. The Parties have Filed a Stipulation and Proposed Order Selecting an
ADR Process:**

15 Plaintiffs have not yet met and conferred with defendants since service has not
 16 yet occurred. However, plaintiffs are agreeable to mediation.

17. Other References:

18 Since plaintiffs have a claim for injunctive relief, this case is not appropriate
 19 for referral to binding arbitration.

20. Narrowing of Issues:

21 Not at this time.

22. Expedited Schedule:

23 Not at this time.

24. Scheduling:

25 None at this time.

26. Trial:

27 Plaintiff has requested that this case be tried before a jury. Plaintiff estimates
 28 7-10 full court days for trial.

1 **18: Disclosure of Non-party Interested Entities or Persons:**

2 Plaintiff has not yet filed the Certification of Interested Entities or Persons.
3 Plaintiff certifies that, other than the named parties, there is no such interest to report.

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5 Dated: August 24, 2007

FAIR HOUSING LAW PROJECT

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7 _____/s/ _____
8 Annette D. Kirkham
9 Attorney for Plaintiff:

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[PROPOSED] ORDER

The Case Management Conference will be rescheduled to:

Complaint and Service of Summons will be filed and served by no later than August 31, 2007.

Dated: _____

HONORABLE JEREMY FOGEL